

NEWFOUNDLAND AND LABRADOR  
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

AN ORDER OF THE BOARD

NO. P.U. 9(2014)

1 **IN THE MATTER OF** the *Electrical Power*  
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1 (the  
3 "*EPCA*") and the *Public Utilities Act*, RSNL 1990,  
4 Chapter P-47 (the "*Act*"), as amended, and regulations  
5 thereunder; and  
6  
7

8 **IN THE MATTER OF** an application by  
9 Newfoundland and Labrador Hydro ("Hydro")  
10 for approval of amendments to the Rate Stabilization  
11 Plan rules and a refund to Newfoundland Power Inc.  
12 ("Newfoundland Power") customers and certain  
13 Hydro Rural customers.  
14  
15

16 **Background**

17  
18 On April 4, 2013 the Lieutenant Governor in Council, pursuant to section 5.1 of the *EPCA* and  
19 section 39 of the *Hydro Corporation Act, 2007*, issued OC2013-089, OC2013-090 and OC2013-  
20 091 in relation to Hydro's general rate application, the phase-in of rates for Island Industrial  
21 customers and a refund to ratepayers. OC2013-089 directs the Board of Commissioners of Public  
22 Utilities (the "Board") that, among other things, the balance in the January 1, 2007 to June 30,  
23 2013 accumulated Load Variation component of the Rate Stabilization Plan (the "Rate  
24 Stabilization Plan Surplus") is to be used to credit the Island Industrial customers' Rate  
25 Stabilization Plan with \$56.5 million effective June 30, 2013. The remaining balance in the Rate  
26 Stabilization Plan Surplus is to be transferred to the credit of Newfoundland Power's Rate  
27 Stabilization Plan. On July 16, 2013 OC2013-089 and OC2013-090 were amended by OC2013-  
28 207 and OC2013-208 respectively such that the effective date for the Island Industrial  
29 customers' balance transfer was August 31, 2013 and the amount to be transferred was reduced  
30 to \$49 million.  
31

32 OC2013-089 as amended also directs the Board that Hydro's general rate application process  
33 include a Rate Stabilization Plan surplus refund plan to ratepayers. Specifically with respect to  
34 the refund to ratepayers the direction states:  
35

36 6) *Newfoundland and Labrador Hydro's General Rate Application process shall include a*  
37 *Rate Stabilization Plan surplus refund plan to ratepayers. The refund plan shall comprise*  
38 *direct payments or rebates to ratepayers and shall not be in the form of an electricity rate*  
39 *adjustment. This refund plan will exclude Island Industrial customers who will receive*

1 *Rate Stabilization Plan surplus funds through the three year phase-in of new rates. The*  
 2 *Board of Commissioners of Public Utilities shall make the final determination on the*  
 3 *details of the refund to remaining ratepayers;*

4 *7) Newfoundland Power's portion of the Rate Stabilization Plan Surplus shall be*  
 5 *distributed as a direct payment or rebate to its ratepayers and shall not be in the form of*  
 6 *an electricity rate adjustment; and...*

7  
 8 OC2013-091 directs Hydro that:

9  
 10 *2) during its General Rate Application process, it shall file a Rate Stabilization Plan*  
 11 *surplus refund to ratepayers. The refund shall be a direct payment or rebate to ratepayers*  
 12 *and shall not be in the form of an electricity rate adjustment. This refund plan will exclude*  
 13 *Island industrial customers who will receive Rate Stabilization Plan surplus funds through*  
 14 *the three year phase-in of new rates; and...*

15  
 16 On July 30, 2013, in compliance with OC2013-091, Hydro filed an application requesting  
 17 approval of, among other things, changes to the Island Industrial customer rates and to the Rate  
 18 Stabilization Plan rules. Hydro also filed a general rate application on July 30, 2013. On August  
 19 30, 2013 the Board issued Order No. P.U. 26(2013) approving, effective August 31, 2013, the  
 20 credit of \$49 million to the Island Industrial customers' Rate Stabilization Plan and the transfer  
 21 of the remaining balance in the Rate Stabilization Plan Surplus to the credit of the Newfoundland  
 22 Power Rate Stabilization Plan. The Board did not approve Hydro's other proposals in relation to  
 23 rate changes for the Island Industrial customers, leaving these proposals to be addressed in a  
 24 subsequent Order of the Board.

25  
 26 On September 30, 2013 the Board issued Order No. P.U. 29(2013) addressing the remaining  
 27 proposals in Hydro's July 30, 2013 application. The Board finalized rates up to August 31, 2013  
 28 for Hydro's Island Industrial customers and Hydro's rate to Newfoundland Power. The Board  
 29 did not approve the proposed changes to the Rate Stabilization Plan rules to phase-in Island  
 30 Industrial customer rates and rates for these customers were continued on an interim basis. The  
 31 Board also accepted Hydro's proposal to segregate within the Rate Stabilization Plan the August  
 32 31, 2013 plan balances related to the load variation for both the Island Industrial customers and  
 33 Newfoundland Power. Hydro was directed to file revised interim Rate Stabilization Plan rules  
 34 effective September 1, 2013 reflecting the findings of the Board. This application was filed on  
 35 October 18, 2013 and approved in Order No. P.U. 32(2013).

36  
 37 The amount of the Rate Stabilization Plan Surplus as of August 31, 2013 was \$161.6 million.  
 38 The allocation of the \$49 million to the Island Industrial customers' Rate Stabilization Plan on  
 39 August 31, 2013 resulted in a credit of \$10.9 million in the Island Industrial customers' Rate  
 40 Stabilization Plan. The remaining Rate Stabilization Plan Surplus balance of \$112.6 million is  
 41 segregated into a separate plan referred to as the Newfoundland Power Rate Stabilization Plan  
 42 Surplus ("NP RSP Surplus").

43  
 44 **The Application**

45  
 46 On October 31, 2013, pursuant to OC2013-091, Hydro filed an application for approval of a Rate  
 47 Stabilization Plan surplus refund plan (the "Application"). A minor amendment to this

1 Application was filed on November 7, 2013. In the Application Hydro requests an Order of the  
2 Board approving:

- 3
- 4 a) That the NP RSP Surplus refund be paid to Newfoundland Power, and to those rural  
5 customers whose rates are based on the rates charged by Newfoundland Power.
  - 6 b) That the NP RSP Surplus be refunded to Newfoundland Power customers on their  
7 April 2014 electricity bills and be based on their total energy consumption on bills  
8 issued during the period January 2013 to December 2013.
  - 9 c) That Hydro's Rural customers, whose rates are based on Newfoundland Power rates,  
10 receive a similar refund on their April 2014 electricity bills based on their total  
11 energy consumption on bills issued during the period January 2013 to December  
12 2013.
  - 13 d) That the refund to Rural customers be funded from the NP RSP Surplus.
  - 14 e) That any net refund to Newfoundland Power's customers and Hydro's customers be  
15 in the form of a credit to each customer's account.
- 16

17 The Application was copied to Newfoundland Power, the Consumer Advocate, and Island  
18 Industrial customers (Corner Brook Pulp and Paper, North Atlantic Refining Limited and Teck  
19 Resources Limited, Praxair Canada Inc., and Vale Newfoundland and Labrador Limited  
20 Limited).

21

22 On November 5, 2013 the Board forwarded the Application to the Intervenors in Hydro's general  
23 rate application. Newfoundland Power and the Consumer Advocate notified the Board that they  
24 wished to participate in the Application. The Industrial Customer group of Corner Brook Pulp  
25 and Paper Limited, North Atlantic Refining Limited and Teck Resources Limited advised that  
26 they would not be participating in the Application. The Innu Nation and the Towns of Labrador  
27 City, Wabush, Happy Valley-Goose Bay and North West River also advised that they would not  
28 be participating. The Board did not receive any correspondence from the other general rate  
29 application Intervenors.

30

31 On November 14, 2013 the Board wrote the parties to the Application requesting submissions on  
32 the issue of whether the Application should be addressed in Hydro's general rate application or  
33 should proceed as a separate matter. On November 27, 2013 the Board determined that the  
34 Application involves a discreet issue which does not require the resolution of other issues  
35 flowing from Hydro's general rate application. The Board found that addressing this matter  
36 before the completion of the general rate application would allow for the early distribution of the  
37 refund. The Board did note, however, that if it appears that, as the matter progresses, the  
38 consideration of issues should be brought together with other matters in the general rate  
39 application, the schedule and process would be appropriately adjusted.

40

41 On December 4, 2013 the Board set a schedule for the review of the Application. On January 28,  
42 2014 the Board revised this schedule to allow for the filing of additional requests for information  
43 ("RFIs") and evidence. A total of 95 RFIs were issued to Hydro and one RFI was issued to  
44 Newfoundland Power. On February 24, 2014 Newfoundland Power filed evidence in relation to  
45 the Application proposals.

1 On February 27, 2014 the Board wrote the parties advising that it would give early consideration  
2 to Hydro's proposal to give a refund to certain Rural customers. In its letter the Board noted that  
3 there is an outstanding ruling expected from the Canada Revenue Agency ("CRA") in relation to  
4 the HST treatment of the proposed refund which must be resolved before the matter can be  
5 concluded. The Board advised that, to provide clarity and focus to the remaining issues, it would  
6 address Hydro's proposals in relation to the refund to its Rural customers in advance of the other  
7 issues in the Application. The Board requested that the parties' submissions address Hydro's  
8 proposals that:

- 9
- 10 i) the NP RSP Surplus refund be apportioned to Newfoundland Power and to Hydro's  
11 Rural customers whose rates are based on the rates charged by Newfoundland Power;
  - 12 ii) Hydro's Rural customers whose rates are based on the rates charged by  
13 Newfoundland Power, receive a similar refund to Newfoundland Power's customers;  
14 and
  - 15 iii) the refund to Hydro's Rural customers be funded from a portion of the NP RSP  
16 Surplus.

17  
18 The Board advised that it would establish the process for the remainder of the issues in the  
19 Application when Hydro confirms that it has received the ruling of the CRA.

20  
21 Written submissions were filed by the Consumer Advocate and Newfoundland Power on March  
22 7, 2014. Hydro filed a reply submission on March 11, 2014. This Decision and Order addresses  
23 the Board's findings on Hydro's proposals in relation to the refund to its Rural customers. The  
24 remaining issues in the Application, including the calculation methodology and recovery of  
25 administrative costs, will be addressed in a subsequent Order of the Board.

## 26 27 **Evidence and Submissions**

### 28 29 Hydro

30  
31 Hydro proposes that the NP RSP Surplus be refunded to Newfoundland Power customers and  
32 Hydro Rural customers whose rates are based on Newfoundland Power rates. Rates for Hydro's  
33 Rural customers, with the exception of customers on the Labrador Interconnected system and  
34 Government customers on the Isolated systems, are based on the rates approved by the Board for  
35 Newfoundland Power customers, in accordance with Hydro's *Policies for Automatic Rate*  
36 *Changes* set out in its Rules and Regulations. Hydro states that, had the fuel cost savings  
37 reflected in the NP RSP Surplus been passed on to Newfoundland Power customers in  
38 accordance with the Rate Stabilization Plan rules, Newfoundland Power customers' rates would  
39 have been lower as a result of the annual July 1 Rate Stabilization Plan adjustment rate. Hydro  
40 states that, based on the *Policies for Automatic Rate Changes*, reduced rates for Newfoundland  
41 Power customers would have also resulted in lower rates for certain Rural customers.

42  
43 Hydro considered two alternatives for treating the proposed refund to its Rural customers whose  
44 rates are based on Newfoundland Power's customer rates:

- 1 i) Upon refund of the NP RSP Surplus to Newfoundland Power customers a similar  
 2 percentage refund would be given to Hydro Rural customers whose rates are based  
 3 on Newfoundland Power rates. The amount required to offer this refund would then  
 4 be collected from Newfoundland Power customers through the operation of section  
 5 1.3 of the Rate Stabilization Plan.
- 6 ii) Similar to the first scenario, the same percentage refund would be given to both  
 7 Newfoundland Power customers and Hydro Rural customers whose rates are based  
 8 on Newfoundland Power rates, with both funded from the NP RSP Surplus. To effect  
 9 this approach Hydro proposes to set aside an amount from the NP RSP Surplus to  
 10 cover the proposed refund to its Rural customers.

11  
 12 Hydro proposes the second alternative in the Application whereby the refund to its Rural  
 13 customers whose rates are based on Newfoundland Power rates is funded from the NP RSP  
 14 Surplus and not through the subsequent operation of the Rate Stabilization Plan. The amount of  
 15 the refund to be credited to customers' accounts is estimated by Hydro to be approximately two  
 16 cents per kWh for the billed energy over the January 1, 2013 to December 21, 2013 period.

17  
 18 In its submission at page 2 Hydro argues that the issue of whether the Rate Stabilization Plan  
 19 refund should apply to both Newfoundland Power's customers and certain Hydro Rural  
 20 customers depends on the correct interpretation of OC2013-089. Hydro explains:

21  
 22 *The Order in Council can be said to contain two distinct steps that are to be applied to*  
 23 *make refund payments to customers. Paragraph 2 of the Order (the first step) divides the*  
 24 *RSP surplus amount so as to determine the amounts of entitlement amongst two*  
 25 *components of the RSP (Industrial and Newfoundland Power).*

26  
 27 *Once the RSP surplus is divided, paragraphs 6 and 7 of the Order (the second step)*  
 28 *focuses on the rebates to customers other than the Industrial Customers; that is these*  
 29 *paragraphs address the method of disposition of the amount credited to the*  
 30 *"Newfoundland Power Rate Stabilization Plan" amongst "the remaining ratepayers".*

31  
 32 Hydro suggests that, if the Order in Council was intended to restrict the disposition of the funds  
 33 to Newfoundland Power customers only, this would effect a substantive change from the normal  
 34 disposition of positive balances in the Rate Stabilization Plan and as such would require very  
 35 clear language. Hydro further states at page 4 of its submission:

36  
 37 *In particular, if it were the intention that the Order in Council was to direct the Board to*  
 38 *make a refund plan that gave amounts to Industrial Customers and Newfoundland Power*  
 39 *customers only, that intention could have been easily expressed by substituting*  
 40 *"Newfoundland Power's customers" for "ratepayers" and "remaining ratepayers" where*  
 41 *they appear in paragraph 6 of the Order in Council.*

42  
 43 Hydro sets out its interpretation of paragraph 6 of OC2013-089 at page 5 of its submission:

44  
 45 *Only two groups of customers are referred to there as entitled to receive portions of the*  
 46 *RSP surplus: Island industrial customers and remaining ratepayers. Hydro submits that*  
 47 *these words in the Order in Council are not imprecise, incorrect nor ambiguous; on the*  
 48 *contrary, they were carefully chosen and their meaning and effect are clear. Where the*

1           *Order in Council addresses the manner by which the Board is to make refunds with respect*  
2           *to the customers affected by the RSP surplus funds disposition, that authority and*  
3           *discretion is given to the Board with respect to the "remaining ratepayers".*  
4

5 Hydro argues that the Order in Council makes clear which customers the Board is authorized to  
6 consider for refunds - all customers that are involved in and affected by the Rate Stabilization  
7 Plan Surplus, being Newfoundland Power customers and Hydro Rural customers whose rates are  
8 based on Newfoundland Power rates.  
9

#### 10 Newfoundland Power

11

12 In its evidence, at page 3, Newfoundland Power states that the Orders in Council do not contain a  
13 direction to pay any portion of the NP RSP Surplus to Hydro Rural customers and that OC2013-  
14 089 directs that Newfoundland Power's portion of the Rate Stabilization Plan Surplus be  
15 distributed as a direct payment or rebate to its customers.  
16

17 Newfoundland Power further states that the rates of Hydro Rural customers do not recover the  
18 costs of serving those customers. Newfoundland Power notes that, in accordance with provincial  
19 government policy, the deficit between the cost of serving Hydro Rural customers and the rates  
20 paid by those customers is subsidized in large part by the rates paid by the customers of  
21 Newfoundland Power. According to Newfoundland Power's evidence (page 4) the forecast of  
22 the amount of this deficit which will be included in Newfoundland Power's 2014 customer rates  
23 is approximately \$54 million, which represents approximately 8% of the rates paid by customers  
24 of Newfoundland Power. Newfoundland Power states that, in these circumstances, Hydro's  
25 Rural customers should not receive a portion of the NP RSP Surplus.  
26

27 In its final submission Newfoundland Power argues that the proposed refund to Hydro's Rural  
28 customers is inconsistent with (i) the directions given in OC2013-089; and, (ii) the language  
29 contained in Hydro's *Policies for Automatic Rate Changes*. Newfoundland Power submits that  
30 OC2013-089 contains no explicit direction to pay any portion of the NP RSP Surplus to Hydro's  
31 Rural customers and, in fact, there is no mention of Hydro's Rural customers in any of the  
32 Orders in Council related to the Application. Newfoundland Power states at page 2 of its  
33 submission:  
34

35           *OC2013-089 directed the Board to divide the Rate Stabilization Plan Surplus into 2*  
36           *portions. The first portion (\$49 million) was to be credited to the Rate Stabilization Plan of*  
37           *the Island Industrial customers. The "remaining balance" was to be credited to*  
38           *Newfoundland Power's Rate Stabilization Plan. The Order directs that the portion credited*  
39           *to the Island Industrial customers is to be used to phase-in industrial rates over a defined*  
40           *phase-in period. Newfoundland Power's portion is to be distributed as "a direct payment*  
41           *or rebate to its ratepayers.... (emphasis added)*  
42

43 Newfoundland Power also reiterates its position that, during the period when the Rate  
44 Stabilization Plan Surplus accumulated, Newfoundland Power's customers were effectively  
45 paying more than the full cost of their service, while Hydro's Rural customers whose rates are  
46 based on Newfoundland Power rates paid less than the full cost of their service and were in large

1 part subsidized by Newfoundland Power customers. Hydro's position is not, according to  
2 Newfoundland Power, consistent with a reasonable, contextual interpretation of OC2013-089.

3  
4 Newfoundland Power argues that Hydro's proposition that a rebate should be considered a rate  
5 adjustment for the purposes of the *Policies for Automatic Rate Changes* but not a rate adjustment  
6 for the purposes of the Government direction is not supported by regulatory precedent and is not  
7 reasonable. At page 3 of its submission Newfoundland Power states:

8  
9 *Hydro suggests that Government intended that the Policies for Automatic Rate Changes be*  
10 *triggered by changes in "effective rates". According to Hydro, this is reflected in the fact*  
11 *that certain rate adjustments for Hydro's customers on Isolated Systems are based on "the*  
12 *average rate of change granted Newfoundland Power from time to time". It is not clear*  
13 *how this supports Hydro's interpretation, since the purpose of the averaging mechanism is*  
14 *simply to facilitate rate adjustments where there are no equivalent Newfoundland Power*  
15 *rates.*

16  
17 On the question of the funding of the proposed refund Newfoundland Power submits that, should  
18 the Board determine that certain Hydro Rural customers are entitled to a refund, it is appropriate  
19 that the refund be calculated in the same manner for customers of both Newfoundland Power and  
20 Hydro and that the refund to Hydro's Rural customers be funded from the NP RSP Surplus.

21  
22 Consumer Advocate

23  
24 The Consumer Advocate supports Hydro's proposals as set out in the Application. He submits  
25 that any assessment of Hydro's proposal must take cognizance of the fact that the refund amount  
26 accumulated over several years in the Rate Stabilization Plan owing to the load variation  
27 component. The Consumer Advocate notes that, under current rules of the Rate Stabilization  
28 Plan, this amount would normally form part of the balance used to calculate the Rate  
29 Stabilization Plan adjustment to be applied to energy consumption (for Newfoundland Power  
30 customers) for the period July 1, 2014 to June 30, 2015. In accordance with Hydro's *Policies for*  
31 *Automatic Rate Changes*, lower rates for Newfoundland Power customers would result in lower  
32 rates for Hydro Rural customers whose rates are based on Newfoundland Power rates.

33  
34 The Consumer Advocate submits that the question of which customers should benefit from the  
35 refund should not depend on whether the refund plan takes the form of direct payments or is in  
36 the form of an electricity rate adjustment. He notes that Government in enacting OC2013-089  
37 would be aware of the fact that Hydro's Island Interconnected customers pay the same rates as  
38 Newfoundland Power's customers and that rate changes for Newfoundland Power customers  
39 also impact certain of Hydro's Rural customers. In his submission at pages 2-3 the Consumer  
40 Advocate references the language of OC2013-089 and notes that the reference in paragraph 6 "*is*  
41 *made to "ratepayers" – not to a particular group or class of ratepayers."* He goes on to note  
42 that the only group excluded are the Island Industrial customers and that paragraph 6 provides  
43 for the Board to make the final determination on the details of the refund to remaining  
44 ratepayers. He submits:

45  
46 *The term "remaining ratepayers" evidences the fact that there is no intent to limit the*  
47 *refund to a particular group or class of ratepayers. The term "remaining ratepayers"*

1 *clearly encompasses more customers than just customers of Newfoundland Power. Having*  
 2 *excluded only the Island Industrial customers for consideration for the refund, it would*  
 3 *simply not make sense to use the term "remaining ratepayers" if the intent was to*  
 4 *exclusively benefit Newfoundland Power customers.*

5  
 6 The Consumer Advocate agrees with Hydro that the right to receive the refund extends to the  
 7 ratepayers who normally receive Rate Stabilization Plan related rate changes and submits that the  
 8 Order in Council did not exclude from the refund those customers whose rates are subsidized. He  
 9 submits that OC2013-089 does not leave it open to the Board to deny a refund to those customers  
 10 who normally receive Rate Stabilization Plan related rate changes.

## 11 **Discussion and Board Findings**

12  
 13 Under section 5.1 of the *EPCA* the Lieutenant Governor in Council can direct the Board with  
 14 respect to the policies and procedures to be implemented in certain aspects of its regulation of  
 15 public utilities, and specifically with respect to certain matters related to Hydro. The Lieutenant  
 16 Governor in Council has, under section 5.1 of the *EPCA*, directed the Board in OC2013-089, as  
 17 amended, as to the ultimate disposition of the Rate Stabilization Plan Surplus. This direction  
 18 firstly distributes the Rate Stabilization Plan Surplus between the Island Industrial customers'  
 19 Rate Stabilization Plan and Newfoundland Power's Rate Stabilization Plan. This first step of  
 20 dividing the Rate Stabilization Plan Surplus amounts between the two components of the Rate  
 21 Stabilization Plan was dealt with in Order No. P.U. 26(2013) in which the Board ordered:

22  
 23  
 24 *1. Hydro shall on August 31, 2013:*

- 25 *i) credit \$49 million to the Island Industrial Customers' Rate Stabilization Plan; and*  
 26 *ii) transfer the remaining balance in the January 1, 2007 to August 31, 2013*  
 27 *accumulated Load Variation component of the Rate Stabilization Plan to the credit*  
 28 *of the Newfoundland Power Inc. Rate Stabilization Plan.*

29  
 30 The matter before the Board now is the disposition of the amount transferred to Newfoundland  
 31 Power's Rate Stabilization Plan, which has been segregated as the NP RSP Surplus. The amount  
 32 at issue to be refunded to ratepayers as of August 31, 2013 was \$112.6 million.

33  
 34 There is fundamental disagreement between Hydro and the Consumer Advocate on the one hand  
 35 and Newfoundland Power on the other as to the interpretation of OC2013-089 in relation to  
 36 which customers should receive a refund. The question of which customers are entitled to the  
 37 payment/rebate is important as the amount to be distributed from the NP RSP Surplus is  
 38 substantial and the amount to be refunded to each customer will be affected by the decision as to  
 39 which customers are included in the refund plan.

40  
 41 In making a determination on this issue the Board must look to the language of the Order in  
 42 Council which directs the Board. Paragraph 6 of OC2013-089, which directs the form of the  
 43 refund and to whom it is to be paid, states:

44  
 45 *6) Newfoundland and Labrador Hydro's General Rate Application process shall include a*  
 46 *Rate Stabilization Plan surplus refund plan to ratepayers. The refund plan shall comprise*  
 47 *direct payments or rebates to ratepayers and shall not be in the form of an electricity rate*  
 48 *adjustment. This refund plan will exclude Island industrial customers who will receive Rate*



1           *Stabilization Plan surplus funds through the three year phase-in of new rates. The Board of*  
 2           *Commissioners of Public Utilities shall make the final determination on the details of the*  
 3           *refund to remaining ratepayers; (emphasis added)*  
 4

5 Paragraph 7 of OC2013-089 further states:

6  
 7           7) *Newfoundland Power's portion of the Rate Stabilization Plan Surplus shall be*  
 8           *distributed as a direct payment or rebate to its ratepayers and shall not be in the form of*  
 9           *an electricity rate adjustment; and...*

10  
 11 The Board also notes paragraph 2 of OC2013-091 which sets out the direction of Government to  
 12 Hydro states:

13  
 14           2) *during its General Rate Application process, it shall file a Rate Stabilization Plan*  
 15           *surplus refund plan to ratepayers. The refund shall be a direct payment or rebate to*  
 16           *ratepayers and shall not be in the form of an electricity rate adjustment. This refund plan*  
 17           *will exclude Island industrial customers who will receive Rate Stabilization Plan surplus*  
 18           *funds through the three year phase-in of new rates; and... (emphasis added)*  
 19

20 The only distinction made in paragraph 6 of OC2013-089 with respect to the refund plan is  
 21 between the Island Industrial customers and remaining ratepayers. Paragraph 6 does not contain  
 22 any reference to Newfoundland Power or its customers, Hydro's Rural customers, or any other  
 23 specific Hydro customers. Similarly, paragraph 2 of OC2013-091 directs Hydro to file a refund  
 24 plan whereby there is direct payment or rebate to ratepayers excluding Island Industrial  
 25 customers. The Government direction does not restrict or narrow the customers to receive the  
 26 refund except to say that it is to go to remaining ratepayers after the exclusion of the Island  
 27 Industrial customers. It does not direct the Board further or set out any criteria as to specific  
 28 classes of customers eligible or entitled to the refund. The Board does not accept Hydro's  
 29 suggestion that OC2013-089 makes it clear that the Board is authorized to consider ordering  
 30 refunds to all customers that are involved in and affected by the Rate Stabilization Plan Surplus.  
 31

32 Hydro's position that the term ratepayers is meant to include Newfoundland Power's customers  
 33 and certain Hydro Rural customers appears to be based on the established rate policy. Hydro's  
 34 policy for automatic rate changes is based on long standing government direction and provides  
 35 that rates for its Rural customers (other than Labrador Interconnected and Government customers  
 36 on Isolated systems) are based on the rates established by the Board for Newfoundland Power's  
 37 customers. Section 16 of Hydro's approved Rules and Regulations of Service provides that rates  
 38 for these customers are automatically adjusted based on changes to Newfoundland Power's rates:  
 39

40           *Policies for Automatic Rate Changes*

41           (a) *Island Interconnected System:*

42           (i) *As Newfoundland Power changes its rates, Hydro will automatically adjust all rates*  
 43           *such that these customers pay the same rates as Newfoundland Power customers.*

44           (b) *L'Anse au Loup System:*

45           (i) *As Newfoundland Power changes its rates, Hydro will automatically adjust all rates*  
 46           *such that these customers pay the same rates as Newfoundland Power customers.*

47           (c) *Isolated Systems:*

1           (i) *Isolated Rural Domestic customers, excluding Government departments, pay the same*  
2 *rates as Newfoundland Power for the basic customer charge and First Block consumption*  
3 *(outlined in Rate 1.2D). Rates charged for consumption above this block will be*  
4 *automatically adjusted by the average rate of change granted Newfoundland Power from*  
5 *time to time.*

6           (ii) *Rates for Isolated Rural General Service customers, excluding Government*  
7 *departments, will increase or decrease by the average rate of change granted*  
8 *Newfoundland Power from time to time.*

9           (iii) *As Newfoundland Power changes its rates, Hydro will automatically adjust Rural*  
10 *Isolated street and area lighting rates, excluding those for Government departments, such*  
11 *that these rates are the same as charged Newfoundland Power customers.*

12  
13 The Board notes that Government has specifically directed in OC2013-089 that the refund is not  
14 to be in the form of an electricity rate adjustment. As there is to be no change in rates as a result  
15 of the refund to ratepayers, Newfoundland Power's rates will not change and the *Policies for*  
16 *Automatic Rate Changes* is not operative in this case. Therefore the Board does not accept  
17 Hydro's position that certain Rural customers are entitled to the refund because the rules set out  
18 that the rates for these customers are based on Newfoundland Power's customer rates.

19  
20 Newfoundland Power argues that paragraph 7 of OC2013-089 directs that its portion of the Rate  
21 Stabilization Plan is to be distributed as a direct payment or rebate to its ratepayers and relies on  
22 this paragraph to support its position that the entire amount of the NP RSP Surplus is to be  
23 refunded to Newfoundland Power customers only. In the absence of paragraph 6 of OC 2013-  
24 089 this position would be persuasive. However paragraph 6 states that only the Island Industrial  
25 customers are excluded and "remaining ratepayers" are entitled to the refund. Given the specific  
26 language of paragraph 6 the Board takes paragraph 7 as direction on how Newfoundland Power  
27 is to distribute the refund to its customers once it receives its portion of the Rate Stabilization  
28 Plan Surplus, and that it must be in the form of a direct payment or rebate and not as an  
29 electricity rate adjustment. The Board does not accept the argument of Newfoundland Power that  
30 it should order a refund only to Newfoundland Power customers.

31  
32 In the Board's view the expressed intent of OC2013-089 as set out in paragraph 6 is that  
33 ratepayers, other than the Industrial Customers, shall receive a refund in the form of a direct  
34 payment or rebate. The Board cannot take from the language any other intent, meaning or  
35 understanding of what Government may or may not have known at the time of drafting of the  
36 Order in Council. Government has directed a refund in the form of a direct payment or rebate to  
37 ratepayers except the Island Industrial customers.

38  
39 The Board also does not agree with the argument of Hydro and the Consumer Advocate that the  
40 derivation of the Rate Stabilization Plan Surplus must be considered when deciding which  
41 customers are entitled to the refund. The amount in the Rate Stabilization Plan Surplus  
42 accumulated largely as the result of changes in load over the period January 1, 2007 to August  
43 31, 2013. The Board has been directed by Order in Council and it must comply with the  
44 provisions of this direction. In ordinary circumstances a significant reduction in customer load,  
45 such as occurred on the Island Interconnected system beginning in 2007, would be addressed in a  
46 general rate application during which the components of the Rate Stabilization Plan and base  
47 rates would be reset to reflect the updated costs of service. In this case Hydro did not file a

1 general rate application until 2013. The Board notes that the manner in which the Order in  
2 Council directs the segregation of the Rate Stabilization Plan Surplus does not suggest that the  
3 refund is compensatory. The direction of Government allocates an amount of \$49 million of the  
4 Rate Stabilization Plan Surplus to the Island Industrial customers. OC2013-089 states that this  
5 amount is "*the estimated Rate Stabilization Plan amount required to phase-in industrial*  
6 *customer rates, based on Newfoundland and Labrador Hydro's General Rate Application.*" The  
7 amount allocated is not stated to be calculated in accordance with the Rate Stabilization Plan  
8 rules. Rather the \$49 million is expressed to be an amount estimated to be required to offset  
9 future rate increases for Island Industrial customers. The remaining balance is the amount  
10 transferred to the Newfoundland Power Rate Stabilization Plan to be refunded to ratepayers,  
11 without any calculation of what was or should have been paid by each customer class based on  
12 the Rate Stabilization Plan rules.

13  
14 In the circumstances the Board does not accept that the determination of which customers are  
15 entitled to the refund should be made based on how the Rate Stabilization Plan may have/would  
16 have operated in the period 2007 to 2013. The Rate Stabilization Plan Surplus has been allocated  
17 by Government direction without reference to the impact the normal operation of the Rate  
18 Stabilization Plan would have had on rates for that period. The Government direction expressly  
19 requires that the form of the refund shall be a direct rebate or payment to ratepayers. The words  
20 of the Government direction are clear and unambiguous. Any interpretation of the direction that  
21 looks beyond the plain meaning to try to determine the intention of Government based on  
22 existing rate policies may lead to results which are inconsistent with the language of the Orders  
23 in Council.

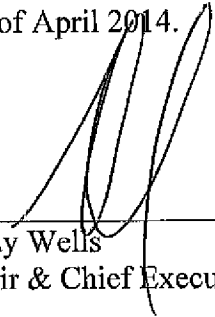
24  
25 The Board agrees with Hydro that it must have regard to the language of the Order in Council.  
26 Based on plain reading of the language of OC2013-089 the Board cannot accept Newfoundland  
27 Power's position that only its customers are entitled to the refund. Similarly the Board cannot  
28 accept the position of Hydro and the Consumer Advocate that certain of Hydro's customers are  
29 entitled to a refund and certain customers are not entitled to a refund. If it was the intent of  
30 Government that only certain customers were entitled to the surplus refund this could have been  
31 clearly stated. In the absence of language that expressly excludes certain customers the Board  
32 interprets the terms "ratepayers" and "remaining ratepayers" to mean all ratepayers, except those  
33 specifically excluded - the Island Industrial customers. Therefore the Board finds that the amount  
34 in the NP RSP Surplus should be refunded as a direct payment or rebate to Newfoundland Power  
35 customers and customers on each of Hydro's systems - Rural Island Interconnected, Island  
36 Isolated, Labrador Isolated, L'Anse au Loup, and Labrador Interconnected.


37  
38 Hydro has advised that it is awaiting a ruling from the CRA on the HST treatment of the refund,  
39 which may affect the total amount of the refund to each customer. The Board expects that Hydro,  
40 Newfoundland Power and the Consumer Advocate will work jointly to determine a reasonable  
41 and appropriate approach in relation to the refund consistent with the direction of Government  
42 and file a consensus proposal with the Board for its consideration.

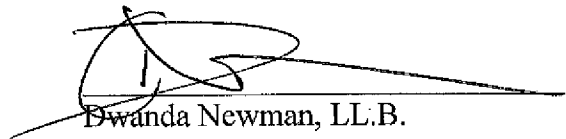
1 **IT IS THEREFORE ORDERED THAT:**  
2

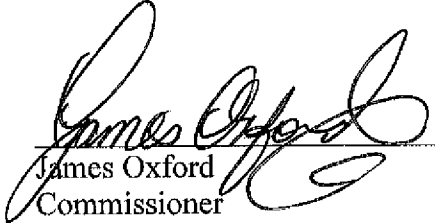
- 3 1. The Newfoundland Power Rate Stabilization Plan Surplus shall be refunded to all  
4 ratepayers, with the exception of the Island Industrial customers, in the form of direct  
5 payment or rebate and in a manner to be approved by the Board.  
6  
7 2. Hydro shall pay the expenses of the Board incurred with this matter.

**DATED** at St. John's, Newfoundland and Labrador, this 9<sup>th</sup> day of April 2014.

  
\_\_\_\_\_  
Andy Wells  
Chair & Chief Executive Officer

  
\_\_\_\_\_  
Darlene Whalen, P.Eng.  
Vice-Chair

  
\_\_\_\_\_  
Dwanda Newman, LL.B.  
Commissioner

  
\_\_\_\_\_  
James Oxford  
Commissioner

  
\_\_\_\_\_  
Cheryl Blundon  
Board Secretary